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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 MICHELE MAZUR, On Behalf of Herself
14 and all Others Similarly Situated,

15 Plaintiff,

16 v.

17 EBAY, INC., HOT JEWELRY
AUCTIONS.COM d/b/a JEWELRY
18 OVERSTOCK AUCTIONS, HOT
JEWELRY AUCTIONS.COM d/b/a
19 PARAMOUNT AUCTIONS, and DOES 1-
100, inclusive,

20 Defendants.
21

Case No. C07 3967 MHP

**DEFENDANT eBay INC.'S REQUEST FOR
JUDICIAL NOTICE**

Date: December 10, 2007
Time: 2:00 p.m.
Judge: Hon. Marilyn H. Patel
Trial Date: Not yet set

22 **REQUEST FOR JUDICIAL NOTICE**

23 Pursuant to Federal Rule of Evidence 201(b), eBay Inc. ("eBay") hereby requests that the
24 Court take judicial notice of the documents listed below in connection with eBay's Motion to
25 Dismiss:
26 A. eBay's User Agreement, referred to in paragraph 138 of Plaintiff's Class Action
27 Complaint ("Complaint") and found at <http://pages.ebay.com/help/policies/user-agreement.html>,
28 a true and correct copy of which is attached as Exhibit A to the Declaration of Whitty Somvichian

1 In support of Defendant eBay Inc.'s Request for Judicial Notice ("Somvichian Declaration") filed
2 herewith.

3 B. eBay's Live Auction User Agreement referred to in paragraph 138 of the
4 Complaint and found at
5 <http://pages.ebay.com/liveauctions/help/community/LA/useragreement.html>, a true and correct
6 copy of which is attached as Exhibit B to the Somvichian Declaration filed herewith.
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8 C. eBay's "Are Live Auctions Safe?" help page referred to in paragraphs 31 and 32
9 of the Complaint and found at <http://pages.ebay.com/liveauctions/help/welcome/lasafe.html>, a
10 true and correct copy of which is attached as Exhibit C to the Somvichian Declaration filed
11 herewith.

12 D. eBay's "How Live Auctions Work" help page, referred to in paragraphs 29 and 30
13 of the Complaint, and found at
14 http://pages.ebay.com/liveauctions/help/welcome/how_works.html, a true and correct copy of
15 which is attached as Exhibit D to the Somvichian Declaration filed herewith.
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17 E. Order Granting Defendant eBay Inc.'s Motion To Dismiss The Third Cause of
18 Action, *Butler v. eBay Inc.*, 06-02704 JW (N.D. Cal. Dec. 13, 2006), a true and correct copy of
19 which is attached as Exhibit E to the Somvichian Declaration filed herewith.
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21 ARGUMENT

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23 This Court may consider facts subject to judicial notice in connection with a party's
24 motion to dismiss. *See, e.g., MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986)
25 (on a motion to dismiss, court may take judicial notice of matters of public record outside the
26 pleadings). "[D]ocuments whose contents are alleged in a complaint and whose authenticity no
27 party questions, but which are not physically attached to the pleading, may be considered in
28 ruling on a Rule 12(b)(6) motion to dismiss." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir.

1994) *overruled on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002).

Judicial notice is appropriate for facts “not subject to reasonable dispute” that are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Under Federal Rule Evidence 201(d), “[a] court shall take judicial notice if requested by a party and supplied with the necessary information.” Fed. R. Evid. 201(d). All of the items for which eBay requests judicial notice are “not subject to reasonable dispute” that are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” *See* Fed. R. Evid. 201(b).

Judicial notice of eBay’s User Agreements, “Are Live Auctions Safe?” help page, “How Live Auctions Work” help page, and the documents linked thereto is appropriate because the User Agreements and the help pages are referenced in the Class Action Complaint. *See* Class Action Complaint¶138, 29-32. Moreover, judicial notice of these documents is appropriate for the additional reason that they are readily available on the Internet. *See Caldwell v. Caldwell*, 420 F. Supp. 2d 1102, 1105 n.3 (N.D. Cal. 2006); *Twentieth Century Fox Film Corp. v. Marvel Enterprises, Inc.*, 220 F. Supp. 2d 289, 296 n.9 (S.D.N.Y. 2002); *Richards v. Cable News Network, Inc.*, 15 F. Supp. 2d 683, 691 (E.D. Pa. 1998)(all taking judicial notice of web pages).

Judicial notice is appropriate for the order in *Butler v. eBay Inc.*, granting eBay’s motion to dismiss the third cause of action because it is an official court record. *See, MGIC Indem. Co. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986); *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980)(each taking judicial notice of court records).

CONCLUSION

All the items of which eBay requests judicial notice are “not subject to reasonable dispute” and are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” *See* Fed. R. Evid. 201(b). For these reasons, eBay respectfully requests that the Court grant its request and take judicial notice of the items enumerated herein.

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Dated: October 26, 2007

Respectfully submitted,

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/s/ Whitty Somvichian
Whitty Somvichian

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